No. 90-609

IN THE
Supreme Court of the United States
OCTOBER TERM, 1990

REICHHOLD CHEMICALS, INC.,
Petitioner,
v.

TEAMSTERS LOCAL UNION NO. 515, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and NATIONAL LABOR RELATIONS BOARD,
Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the District of Columbia

TEAMSTERS LOCAL UNION NO. 515 BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the decision of the Court of Appeals finding the National Labor Relations Board's determination of causation of a strike to be without substantial evidence on the record considered as a whole should be reversed under the judicial review principles established in 29 U.S.C. Sections 160(e), (f).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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TEAMSTERS LOCAL UNION NO. 515 BRIEF IN OPPOSITION

The petitioner, Reichhold Chemical, Inc., has prayed that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the District of Columbia. Respondent Teamsters Local Union No. 515 opposes such review.

OPINIONS BELOW

The decision of the National Labor Relations Board is officially reported at *Reichhold Chemicals, Inc.*, 288 N.L.R.B. 69 (1988) (supplementing decision at 277 N.L.R.B. 639 (1985)) and are reprinted in the Appendix to the Petition. The decision of Administrative Law

Judge, Lawrence W. Cullen is officially reported at 277 N.L.R.B. 641, and is reprinted in the Appendix to the Petition.

The opinion of the United States Circuit Court of Appeals for the District of Columbia was filed June 22, 1990, is reported at 906 F.2d 719 and is reprinted in the Appendix to the Petition. Judgment was filed on July 2, 1990. An order denying Petitioner Reichhold Chemicals, Inc. petition for rehearing and suggestion of rehearing en banc, filed August 6, 1990, was entered by the United States Circuit Court of Appeals for the District of Columbia Circuit on September 25, 1990.

JURISDICTION

Petitioner has sought jurisdiction of this Court pursuant to 28 U.S.C. § 1254(1). However, Petitioner's petition for rehearing before the Court of Appeals, and consequently its Petition for Writ of Certiorari, are untimely. FED. R. APP. P. 40(a). For the reasons stated herein the petition for writ of certiorari should be denied. This case concerns the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*; and case law arising thereunder.

COUNTER STATEMENT OF THE CASE

Petitioner's request for review is based exclusively upon its claim that the appellate court erred in its factual conclusion that an illegal employer contract proposal was a causal factor in a strike to enforce the Union's bargaining position. The relevant facts of this unfair labor practice case are set forth in detail in the decision of Circuit Judge Harry T. Edwards of the United States Court of Appeals for the District of Columbia Circuit, 906 F.2d at 721-22. The specific analysis of the factual inferences raised by the record and which lead the appellate court to conclude that the strike was the result of an illegal employer proposal are discussed in the opinion, 906 F.2d at 723-26.

Petitioner misstates the factual record by asserting that the unlawful proposed contract clause was not mentioned in either of the strike-vote meetings. Thus, Petitioner mistakenly claims that the employees were unaware of its unlawful proposal at the time they voted to strike. *See* Petition, at 2.

The appellate court, at 906 F.2d at 721, 724-25, cites evidence in the record showing that Petitioner's bargaining proposal on a no-strike clause, which contained the unlawful no access provision, was discussed at the employee meetings by Union President N. Robert Logan. Both the court and the National Labor Relations Board found that Union President Logan did specify the exact language of the unlawful no access provision as a "strike issue" during the negotiation sessions with management. *Id.*

The appellate court also relied upon the fact that at least five of the employees participating in the strike vote were involved in the collective bargaining negotiations as members of the Union's negotiating committee and had first-hand knowledge of the specific unlawful bargaining proposal presented by Petitioner as well as the expressed position of the Union that it was a strike issue. 906 F.2d at 725, n.6.

This fact belies Petitioner's assertion in its Statement of the Case at Petition page 4 that "[t]he Court of Appeals accepted the Board's factual finding that the employees were unaware of the offending clause when they decided . . . to go on strike . . .". To the contrary, the appellate court specifically found that at least some of the employees possessed such specific knowledge. The court also noted that Petitioner's trial strategy precluded testimony by employees as to their reasons for voting to strike. 906 F.2d at 724, 725, n.6. But this ploy merely reinforced the court's conclusion that the strike vote reflected the employee's ratification of the Union's judgment

that the illegal employer proposal should be rejected, resulting in the strike to emphasize that view.

REASONS FOR DENYING THE WRIT

The Court of Appeals determined that the issue presented for decision was whether the Board's determination on strike causation is supported by substantial evidence in the record, an evidentiary issue, and not a question concerning the proper legal standard for establishing causation. 906 F.2d at 722-23, n.2. The Court of Appeals noted that the Brief of the Board stated the question before the Court was "whether the Board was 'required' to draw the factual references urged by the Union and conclude that the waiver of Board access was a contributing cause of the strike". *Id.* Because Petitioner adopted the Brief of the Board in its entirety before the Court of Appeals and did not raise any separate argument, it has waived any claim that a new legal standard was an issue addressed by the Court of Appeals. *See* FED. R. APP. P. 28(a)(4), (b), (i).

The Court of Appeals, under the provisions of 29 U.S.C. § 160(e), (f), is the court of last resort for determinations of whether the decision of the Board is supported by substantial evidence. In *National Labor Relations Board v. Pittsburgh Steamship Co.*, 340 U.S. 498, 503, 71 S. Ct. 453, 95 L. Ed. 479, 482-83 (1951), Justice Frankfurter explained:

> "This is not the place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way. It is not for us to invite review by this Court of decisions turning solely on evaluation of testimony where on a conscientious consideration of the entire record a Court of Appeals under [29 U.S.C. § 160(e), (f)] finds the Board's order unsubstantiated. In such situations we should adhere to the usual rule of noninterference where

conclusions of Circuit Courts of Appeals depend on appreciation of circumstances which admit of different interpretations".

The question of whether substantial evidence supports a finding of the National Labor Relations Board is a question for the Court of Appeals to consider. *See National Labor Relations Board v. Curtin Matheson Scientific, Inc.*, 494 U.S. ——, 110 S. Ct. 1542, 108 L.Ed. 2d 801, 807 n.2 (1990). "Whenever an agency's action is reversed in court for lack of 'substantial evidence', the reason is that the agency has ignored an inference that reasonably must be drawn, or has drawn inferences that reasonably cannot be." *Id.*, 108 L.Ed. 2d at 830 (Scalia J., dissenting).

The opinion of the Court of Appeals for the District of Columbia Circuit on the issue of strike causation reinstated the Administrative Law Judge's finding of a violation of Section 8(a)(3) of the National Labor Relations Act. This conclusion was reached through a process of reasoning by which the proposition—causation—was deduced as a logical consequence from other facts, and the state of facts, already proved or admitted in the record. Inferences "are not creatures of the Board but its masters, representing the dictates of reason and logic that must be applied in making adjudicatory factual determinations". *Id.*

Each of the decisions cited by Petitioner at page 8 of the Petition stands for the proposition that if an unfair labor practice committed by the employer is a cause of a strike, then the strike must be considered an unfair labor practice strike. The Court of Appeals for the District of Columbia Circuit in the present case has applied this legal standard, arising from this Court's precedent on this issue, to the facts in the record. *See NLRB v. International Van Lines*, 409 U.S. 48, 50-51, 93 S. Ct. 74, 34 L.Ed. 2d 201 (1972); *NLRB v. Fleetwood Trailer Co.*, 389 U.S. 375, 378, 88 S. Ct. 543, 19 L.Ed. 2d 614 (1967);

Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 278, 76 S. Ct. 349, 100 L.Ed. 309 (1956).

A review of the factual determinations made in each Court of Appeals cases cited by Petitioner shows that the overall legal standard of causation has been applied to the specific facts in the record of those cases. Similarly, the Court of Appeals for the District of Columbia Circuit, here, conducted a substantial evidence review of the Board's causation determination and found it wanting. Petitioners simply seek review of a factual conclusion with which they differ. There is no conflict in the legal standard applied in this case and any prior decisions of the Courts of Appeal which would merit this Court's review.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the District of Columbia should be denied.

Respectfully submitted,

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